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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,880	11/30/2000	Chyi-Cheng Chen	20223 US (C38435/120240)	1470

7590 02/23/2004

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EXAMINER	
CHANNAVAJJALA, LAKSHMI SARADA	
ART UNIT	**PAPER NUMBER**
1615	

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Appli ation No.	Applicant(s)	
	09/726,880	CHEN ET AL.	
	Examiner	Art Unit	
	Lakshmi S Channavajjala	1615	

-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 November 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-27* is/are pending in the application.

4a) Of the above claim(s) *16 and 18-27* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3-15 & 17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Receipt of change of address dated 8-8-03; amendment and remarks dated 11-17-03 is acknowledged.

Claims 1 and 3-27 are pending of which claims 16 and 18-27 have been withdrawn as non-elected. Claims 1, 3-15 and 17 have been examined.

The following rejections were applied in paper # 13

1. Claims 1 and 3-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stein et al (EP '412, hereafter "Stein") OR Stein in view of Ford et al (US 5,507,707 hereafter "Ford).

2. Claims 1 and 7-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tritsch et al (EP '010, hereafter "Tritsch") OR Tritsch in view of Ford et al (US 5,507,707 hereafter "Ford).

3. Claims 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stein alone or Tritsch alone or a in combination with Ford in view of Finnan et al (US 4,830,859 hereafter "Finnan").

4. Obviousness double patenting rejection over US 6,162,474.

Response to Arguments

Applicant's arguments filed 11-17-03 have been fully considered but they are not persuasive.

1. Claims 1 and 3-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stein et al (EP '412, hereafter "Stein") OR Stein in view of Ford et al (US 5,507,707 hereafter "Ford).

RESPONSE: Applicants argue that the obviousness analysis requires an examiner identify the motivation or suggestion to modify a cited document to arrive at the claimed invention as a

whole and that stated rejection identifies no disclosure in Stein or Ford that describes or suggests the claimed droplet diameters and the particle sizes would have same properties. Applicants also argue that the rejection fails to recognize the differences between the claimed particle range and the particles (225 nm) identified by the examiner in the cited prior art, which is substantially large. Applicants argue that Stein discloses less than 1000 nm, preferably less than 400 nm whereas Ford discloses not greater than 650 nm, both of which suggests 4-, 6-, 10 or 15-fold higher than the claimed range. Applicants' arguments were considered but not found persuasive because both Stein and Ford teach particles having a maximum limit but does not specify any lower limit. Accordingly, particles having a size below 400 nm or 650 nm are suitable for the powder composition, which include the claimed 80 nm to 120 nm particles. With respect top the argument that a substantial difference exists in the size of the particles claimed and the cited references, it is examiner's position that while the references teach a size of upto 400 nm and 650 nm, applicants' have not shown any criticality associated with the claimed range. Applicants argue that Ford does not teach a powder composition in a matrix and instead teaches an aqueous solution and that modifying the teaching of Ford would require ignoring the express teachings of the reference that is impermissible. Applicants' arguments are not persuasive because the rejection clearly stated that the teaching of Ford is relied upon for optically clear beverages and not for a powder in matrix. Instead the primary reference of Stein teaches a powder composition dispersed in a matrix (which applicants did not dispute). While Stein teaches the preparation of powders of carotene, which are used as natural colorants (see col. 4, l 3-4 and claim 1), Ford teaches the use of natural colorants such as beta-carotene for substituting azo-dyes in food products and drinks including beverages (see col. 1 of Ford). Thus, both Ford and Stein are

directed to the same field of endeavor i.e., natural colorants in food and drinks. Further, Ford suggests that upon addition of the colorants to drinks, an optically clear solution results only when the composition has particles or micelles of less than 650 nm (example 8, C 11). Therefore, in the absence of evidence to the contrary, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to optimize the particle size any below 400 nm (Stein) or 650 nm (Ford) including the claimed range of particles with an expectation to be able to use the colorant powders of Stein so as to obtain clear food products and drinks. Therefore, the rejection has been maintained.

2. Claims 1 and 7-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tritsch et al (EP '010, hereafter "Tritsch") OR Tritsch in view of Ford et al (US 5,507,707 hereafter "Ford).

Applicants argue that examiner relied on US 6,071,963 for English translation of EP '010, which is improper because there is no relationship EP '010 and US '963, other than both claiming priority to a Swiss application. Applicants argue that rejection fails to meet the evidentiary burden to present prima facie obviousness. However, in response to such an argument, examiner believes that the US '963 references has support for the material described in EP '010 and therefore the reliance on US '963 is proper. Further, applicants have not shown that the disclosure of EP '010 and US '963 are different. Applicants agree that Tritsch '963 teaches human nutrition composition comprising a matrix of fish gelatin containing oil rich in arachidonic acid and antioxidant (tocopherol or ascorbic acid), having a particle size of 180 to 200 nm. Applicants argue that nothing in Tritsch suggests or discloses particle in the claimed

size range. However, as explained in the rejection to motivation to select particles not more than 650 nm comes from Ford and as applicants themselves agree Tritsch teach 180 nm to 200nm. Thus, absent showing any criticality with the claimed size range one of an ordinary skill in the art would expect to appropriately choose the particle size of the composition and expect to produce clear liquids.

3. Claims 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stein alone or Tritsch alone or a in combination with Ford in view of Finnan et al (US 4,830,859 hereafter "Finnan").

With respect to applicants' arguments regarding Stein and Ford, examiner maintains the position as explained above. Applicants argue that Finnan fails to teach oil-soluble vitamins and instead teaches only water-soluble vitamins. However, both Stein and Ford fail to teach compressing powder formulation into a tablet, whereas Finnan teaches that vitamin powder compositions can be compressed in to tablets. Accordingly, it would have been within the scope of a skilled artisan to prepare the powder composition of Stein into a tablet as suggested by Finnan because Stein teaches that powder composition is easily soluble in water (see last lines of all examples) and Finnan teaches compressing water soluble powders in to tablets.

4. Obviousness double patenting rejection over US 6,162,474.

Applicants agreed to file a terminal disclaimer upon finding allowable subject matter. Therefore, the rejection is maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 7.30 AM -4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lakshmi S Channavajjala
Examiner
Art Unit 1615
February 13, 2004

Gollamudi S. Kishore, PhD
Primary Examiner
Group 1600